IN THE HIGH COURT OF JUDICATURE OF BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY PETITION NO.717 OF 1996

In the matter of Mukati Transformers Ltd.

Savita Chemicals Ltd. ..Petitioners.

Mr.J.K.Hegde, for petitioners.

CORAM: A.M.KHANWILKAR,J

DATE : JUNE 21, 2005.

P.C. :

1. Heard counsel for the petitioner. None appears for the respondent company, though served.

2. This petition is filed under Section 433 and 434 of the Companies Act, seeking order of winding up of the respondent company on the assertion that the petitioner is entitled to recovery of sum of Rs.5,09,364/- towards the principal amount and interest accrued thereon, from time to time, which amount till the institution of petition is stated to be Rs.11,86,092.42. The claim of the petitioner is founded on goods sold and delivered to the respondent company.

3. From the avernments in the petition and documents on record, it is seen that the respondent company has acknowledged the liability but failed to pay the amount inspite of the repeated demands. In fact, the cheques were issued towards part payment, which were also dishonoured. The petitioner eventually gave statutory notice on 25th October, 1996, which was duly served on the respondent company. Inspite of the statutory notice, the respondents failed to pay the amount demanded by the petitioner. Eventually the present petition has been filed in this court. This court passed conditional order dated 11th June, 1998, requiring the respondents to deposit the amount of Rs.7 Lakhs, within three months from the date of the order, to avoid proposed action of winding up. Even that conditional order was not complied with by the respondent company. This court, in the circumstances, had no option but to direct the publication of advertisement. That order was passed on 20th November, 1998.

4. Record indicates that in terms of the order, advertisement has been published. Inspite of the service of notice of this petition on the respondent company, and also publication of the advertisement,

the respondent company has not bothered to appear in the present proceedings. No reply has been filed controverting assertion made in the petition, filed on behalf of the petitioner. In that sense, avernments in the petition have remained uncontroverted. In that, Respondent company has acknowledged the liability. There is legal presumption against the respondent company that it is unable to pay its debt. The case made out by the petitioner is established from the documents apended to the petition. In the circumstances, this court has no option, but to accede to the prayer (a) of the petitioner.

5. Accordingly, petition is made absolute in terms of prayer clause (a).

6. Official Liquidator is directed to take possession of the assets and properties of the respondent company forthwith and proceed further in accordance with the law.

7. Petition is disposed of accordingly.